

**REMARKS**

Claims 1-14, 19, and 26-35 are currently pending in the application. By this amendment, claims 1 and 8 are amended and claims 15-18, 20-25, and 36-39 are canceled for the Examiner's consideration. The above amendments do not add new matter to the application and are fully supported by the specification. For example, support for the amendments is provided at Figures 3 and 4, and the description thereof. Reconsideration of the rejected claims in view of the above amendments and the following remarks is respectfully requested.

***Amendments Should be Entered***

Applicants submit that entry of the above amendments is proper. The amendments place the application in condition for allowance and do not add new issues that require further search and/or consideration. Claims 1-14 have been placed into allowable condition as indicated by the Examiner in the Advisory Action dated June 28, 2006. Accordingly, Applicants request entry of the amendments and allowance of the claims. The amendments would also place the application in better form for appeal, if they are not allowed.

***Allowable Subject Matter***

Applicants appreciate the indication that claim 8 contains allowable subject matter. Applicants further appreciate the indication that claims 19 and

26-35 are allowed. Claim 8 is amended to include the subject matter of base claim 1, and accordingly should thus be considered allowed. Applicants further submit that all of the claims are allowable for the reasons set forth below.

**35 U.S.C. §102 Rejection**

Claims 1-7, 11, 12 and 36-39 were rejected under 35 U.S.C. §102(b) for being anticipated by USPN 5,280,694 to Malow. This rejection is respectfully traversed.

Claims 1-7, 11, and 12

Claim 1 recites, in part,

a feeding area having an ingress and egress;  
a diverting arm swingable between an open position remote from the egress of the feeding area and a closed position proximate to the egress of feeding area, in the open position, the diverting arm allowing product to enter the feeding area ....

Applicants submit that Malow does not disclose these features.

In Malow, small goods are transported through a transporting path 1 to a separating module 2 composed of laterally pivotal conveyor belts. As submitted previously, the separating module 2 of Malow is not swingable between an open position and a closed position; regardless of the movement of the separating module 2, the two opposing belts of the separating module 2 always

remain in the same relative position to one another. Hence, the separating module 2 does not include a diverting arm swingable between an open position and a closed position. (See Figures 1 and 2.)

Additionally, even assuming *arguendo* that that the separating module 2 is swingable between an open position and a closed position (which Applicants do not agree), Applicants submit that separating module 2 does not swing between an open position remote from the egress of the feeding area 1 and a closed position proximate to the egress of feeding area 1. As shown in the figures, the hinged portion of the separating module 2 is immediately adjacent to the feeding area 1. Accordingly, in this configuration, the separating module 2 always remains in the same position, near the egress of the feeding area 1. In fact, in the Malow device, it is the side of the separating module 2 remote from the egress of the feeding area which moves. Thus, the configuration of Malow is completely opposite to that of the claimed invention.

Moreover, as claims 2-7, 11 and 12 depend from now allowable independent claim 1, these claims, too, should be indicated as allowable.

#### Claim 36 - 39

Applicants submit that, by the present amendment, the rejection of claims 36-39 under 35 U.S.C. §102(b) is moot.<sup>1</sup>

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<sup>1</sup> Applicants note that the rejection of claim 39 under §102(b) is improper because claim 39 depends from independent claim 15, which is not rejected under §102(b), but, rather, is rejected under §103(a). However, this issue is mooted by the canceling of claim 39 by this amendment.

While Applicants do not acquiesce that any proper combination of the applied documents of record renders unpatentable the combination of features recited in claims 36-39, in an effort to advance prosecution, Applicants have canceled claims 36-39. However, Applicants reserve the right to refile the subject matter of these claims in one or more continuation applications.

***35 U.S.C. §103 Rejections***

Claims 9 and 10 were rejected under 35 U.S.C. §103(a) over Malow in view of USPN 5,906,468 to Vander Syde et al. Claim 13 was rejected under 35 U.S.C. §103(a) over Malow in view USPN 6,438,928 to Huang et al. Claims 14-18 and 21-25 were rejected under 35 U.S.C. §103(a) over Malow in view of USPN 4,997,176 to Hain. Claim 20 was rejected under 35 U.S.C. §103(a) over Malow in view of Hain in view of Vander Syde et al. These rejections are respectfully traversed.

Applicants submit that, by the present amendment, the §103 rejections of claims 9, 10, 13, and 14 are moot as these claims depend from now allowable independent claim 1. Accordingly, these claims should also be indicated as allowable.

Applicants further submit that, by the present amendment, the §103 rejections of claims 15-18 and 20-25 are moot. While Applicants do not acquiesce that any proper combination of the applied documents of record renders unpatentable the combination of features recited in claims 15-18 and

20-25, in an effort to advance prosecution, Applicants have canceled claims 15-18 and 20-25. However, Applicants reserve the right to refile the subject matter of these claims in one or more continuation applications.

### CONCLUSION

In view of the foregoing amendments and remarks, Applicants submit that all of the claims are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue. The Examiner is invited to contact the undersigned at the telephone number listed below, if needed. Applicant hereby makes a written conditional petition for extension of time, if required.

Respectfully submitted,  
Michael E. Caporali et al.

A handwritten signature in black ink, appearing to read 'Andrew M. Calderon', with a horizontal line drawn underneath it.

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